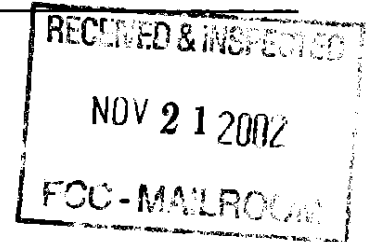


Federal Communications Commission

FCC 02-315

Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)	
)	
Application for Review by)	
)	
Henrico County School District)	File No. SLD-209024
Richmond, Virginia)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER**Adopted: November 15, 2002****Released: November 20, 2002**

By the Commission:

1. Before the Commission is an Application for Review filed by Henrico County Public Schools (Henrico), Richmond, Virginia, seeking review of ~~an~~ Order issued by the Common Carrier Bureau (Bureau) on delegated authority.¹ In the Order, the Bureau upheld the decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company, which denied Henrico's Funding Year 1999 application for discounts under the schools and libraries universal service mechanism.² For the reasons set forth below, we deny the Application for Review and affirm the decision of the Bureau.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for

¹ Application for Review ~~of the~~ Decision of the Common ~~Currier~~ Bureau By Henrico County Public Schools, CC Docket Nos. 96-45 and 97-21. Application for Review, filed March 5, 2002 (Application for Review). Pursuant to the agency's recent reorganization, the Common Carrier Bureau was subsequently renamed the Wireline Competition Bureau.

² Request for Review by Henrico County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National ~~Exchange~~ Carrier Association, Inc., File No. SLD-209024, CC Dockets No. 96-45 and 97-21. Order, 17 FCC Rcd 706 (Com. Car. Bur. 2002) (*Henrico County Order*). Previously, this funding period was referred to as Funding Year 2. Funding periods are now described by the year in which the funding period starts. Thus the funding period which begins on July 1, 1999 and ends on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. Similarly, the funding period which begins on July 1, 2000 and ends on June 30, 2001, previously known as Funding Year 3, is now called Funding Year 2000.

discounts for eligible telecommunications services, Internet access, and internal connections.' In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.' Approval of the application is contingent upon the filing of FCC Form 471, and funding commitment decisions are based on information provided by the school or library in this form.

3. On March 29, 2000, Henrico filed an FCC Form 471 for Funding Year 1999 including ten funding requests, each seeking discounted internal connections.⁶ It did not file an FCC Form 470 in Funding Year 1999.⁷ Henrico's FCC Form 471 referenced FCC Form 470 App. No. 952970000283996, a Funding Year 2000 Form 470 that was posted to SLD's website on December 20, 1999 (Year 2000 Form 470).⁸ Henrico also relied on this Year 2000 Form 470 in support of its Funding Year 2000 applications for discounts, which were filed on January 19, 2000.⁹ On July 17, 2000, SLD rejected Henrico's Funding Year 1999 application for discounts because Henrico had not specified a Funding Year 1999 FCC Form 470 in connection with its Funding Year 1999 funding requests.¹⁰ Henrico then sought review of this SLD decision.¹¹

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ FCC Form 471, Henrico County School District, filed March 29, 2000 (Henrico Form 471). The funding window for Funding Year 1999 initially closed on April 6, 1999. See *Request for Review by Danbury Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-NEC.471.04-13-00.3 1900001, CC Dockets No. 96-45 and 97-21, Order, DA 01-1251, n.8 (Com. Car. Bur. rel. May 23, 2001). However, it was later determined that funds were available in excess of what had been requested by applicants who filed within the original window, and so, on March 1, 2000, SLD announced that it would re-open the filing window to permit additional applications. See *id.*; see also SLD website, What's New (March, 2000). <<http://www.sl.universalservice.org/whatsnew/032000.asp#consideryr2>>. The re-opened window closed on March 31, 2000. *Id.*

⁷ Letter from Charles Stallard, Henrico County Public Schools, to Federal Communications Commission, filed August 16, 2000 (Request for Review), at 1.

⁸ FCC Form 470, Henrico County School District, posted December 20, 1999 (Year 3 Form 470).

⁹ See, e.g., FCC Forms 471, Henrico County School District, App. Nos. 165166 and 188486, filed January 19, 2000 (Year 3 Forms 471).

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Paul F. Kolmetz, Henrico County School District, dated July 17, 2000 (Rejection Letter).

¹¹ Request for Review.

4. Before the Bureau. Henrico argued that reliance on a Funding Year 2000 FCC Form 470 in support of a Funding Year 1999 service request was permissible because “[n]owhere in your correspondence, procedures or instructions does it stipulate that the [Funding Year 1999] application must be based on a [Funding Year 1999] 470 form.”¹² The Bureau found, however, that, with one exception inapplicable to Henrico, **an** FCC Form 470 seeking services in one year could not be used to satisfy the requirement of competitive bidding for service requests in another Funding Year.”

5. In its Application for Review before the Commission, Henrico argues that it should be permitted to rely on the Funding Year 2000 Form 470 because, at the time it electronically posted its FCC Form 470 for Funding Year 1999, SLD had switched to **an** on-line application system for Funding Year 2000 that only permitted the posting of Funding Year 2000 FCC Form 470s.¹⁴ Henrico asserts that it was therefore “impossible to post a Year [1999] Form 470 to the SLD website,” and argues that its Funding Year 1999 application should therefore not be denied for its failure to do so.¹⁵

6. Section 1.115(c) of the Commission's Rules provides that “[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.”¹⁶ We find that Henrico did not raise its present argument in the Request for Review to the Bureau. In that pleading, Henrico merely asserted that, under program procedures, it was not required to use a Funding Year 1999 FCC Form 470 to post a Funding Year 1999 service request.¹⁷ Now it argues that using a Funding Year 1999 FCC Form 470 was impossible at the specific time during which it sought to post a request.¹⁸ The former argument asserts a general right to use a Funding Year 2000 form to post Funding Year 1999 requests, while the latter argument suggests such use should be deemed permissible under the limited circumstances present at the end of Funding Year 1999. Similarly, the factual bases for the current argument, including the limited circumstances just mentioned, and the assertion that these circumstances made posting a Funding Year 1999 request “impossible,” were also not presented below. Accordingly, because Henrico did not raise these factual and legal questions in its Request for Review before the Bureau, consideration of these arguments by the Commission is precluded by section 1.115(c).

7. Further, even if we were to consider the merits of this argument, we would still deny the Application for Review. First, the record demonstrates that Henrico's Funding Year

¹² Request for Review at 1

¹³ *Henrico County Order*, paras. 5-6

¹⁴ Application for Review at 2

¹⁵ *Id.*

¹⁶ 47 C.F.R. § 1.115(c).

¹⁷ Request for Review at 1

¹⁸ Application for Review at 2

2000 FCC Form 470 was clearly intended to support its Funding Year 2000 applications for funding. Henrico submitted two Funding Year 2000 FCC Forms 471 applications seeking Funding Year 2000 discounts.¹⁹ Each application referenced FCC Form 470 App. No. 952970000283996 as the supporting Form 470.²⁰ On September 29, 2000, SLD approved Henrico's Funding Year 2000 App. No. 188486.²¹ SLD denied Henrico's Funding Year 2000 App. No. 165 166 because this application sought support for internal connections and the funding cap could not accommodate applicants, such as Henrico, that were entitled to less than an 81 percent discount in Funding Year 2000.²²

8. Further, it would appear that Henrico's requested relief would work at cross purposes to its already secured funding for Funding Year 2000. Were we to construe the FCC Form 470 App. No. 952970000283996 as a Funding Year 1999 FCC Form 470, thus supporting funding of Henrico's Funding Year 1999 FCC Form 471, it would also establish that Henrico's successful Funding Year 2000 application violated our competitive bidding regulations. This application sought new services in Funding Year 2000, which needed to be posted for bidding by a Funding Year 2000 FCC Form 470 to comply with our competitive bidding rules.²³

9. Moreover, it is true that, after October 25, 1999, because SLD switched its on-line application system from one designed to process Funding Year 1999 applications to one designed for Funding Year 2000, applicants seeking to file FCC Form 470 posting requests for services in Funding Year 1999 were forced to use the on-line system for Funding Year 2000 to do so. However, at the same time that USAC gave applicants official notice of the availability of additional funds on March 1, 2000, it also instructed applicants how to apply for Funding Year 1999 funds with the Funding Year 2000 Form 470s.²⁴ Specifically USAC directed applicants to indicate on their Year 2000 Forms 470 that they were seeking services for Funding Year 1999.²⁵ Forms 470 so designated were included in a list posted on the website separate from the Funding Year 2000 FCC Forms 470, and SLD took special steps to ensure that providers were made

¹⁹ See Year 3 Forms 471

²⁰ *Id.*

²¹ See Letter from Universal Service Administrative Company, Schools and Libraries Division, to Paul Kolmertz, Henrico County Public Schools, Application No. 188486, dated September 29, 2000 (Funding Commitment Decision Letter 188486).

²² See Letter from Universal Service Administrative Company, Schools and Libraries Division, to Paul Kolmertz, Henrico County Public Schools, Application No. 165 166, dated April 14, 2000.

²³ See Year 2000 Form 471 App. No. 188486; 47 C.F.R. § 504(a), (b)

²⁴ See *Request for Review by Virginia Department of Education, Federal-State Joint Board on Universal Service: Changes to the Board of Directors of the National Exchange Carrier Association*, CC Dockets No. 96-45 and 97-21, 17 FCC Rcd 947, para. 4 (Com. Car. Bur. 2002). These directions were published on SLD's website on March 1, 2000. See SLD website, What's New (March, 2000), <<http://www.sl.universalservice.org/whatsnew/032000.asp#consideryr2>>, SLD website, <<http://www.sl.universalservice.org/whatsnew/misc/addinsty2.asp>>.

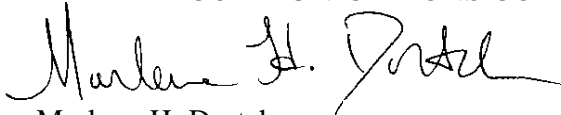
²⁵ *Id.*

aware that there were FCC Form 470s seeking Funding Year 1999 services that were not included among the FCC Form 470s posted in the on-line Funding Year 1999 location.²⁶

10. Thus, contrary to Henrico's assertion, it was not "impossible" to post a request for services in Funding Year 1999. Henrico, having already posted a Funding Year 2000 FCC Form 470 on December 19, 1999 that did not specify its intention to seek Funding Year 1999 funds, had ample opportunity, after March 1, 2000, to resubmit its Year 2000 Form 470 with a notation that the form was seeking Funding Year 1999 funds as USAC instructed. In fact, numerous applicants successfully posted their Funding Year 1999 requests for services using the Funding Year 2000 on-line application system.²⁷ Therefore, while the absence of a Funding Year 1999 on-line system certainly justified applicants using the Funding Year 2000 system to post their Funding Year 1999 requests for bidding, it does not excuse applicants who made no attempt to post Funding Year 1999 requests at all. Here, Henrico made no such attempt to post Funding Year 1999 services. Henrico seeks to rely on an FCC Form 470 that it concedes actually requested services in Funding Year 2000 and on which Henrico in fact relied on to support its subsequent successful Funding Year 2000 FCC Form 471 application.²⁸ Consequently, we conclude that the circumstances to which Henrico refers would not support relief in this case.

11. ACCORDINGLY, IT IS ORDERED, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, that the Application for Review filed by Henrico County Public Schools, Richmond, Virginia, on March 5, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

²⁶ *Id.*

²⁷ *Id.* at para. 11 (noting "numerous FCC Form 470s filed for Funding Year [1999] that were placed in the drop-down box for Funding Year [2000]").

²⁸ Request for Review at 1; see Year 2000 Form 471 at 3; see also Funding Commitment Decision Letter 188486.